SINGAPORE REPORTS

YAP GIAU KENG v. HONG LEONG HOLDINGS LTD.

[O.C.J. (Wee Chong Jin C.J.) July 21, 1972]

[Singapore — Originating Summons No. 300 of 1971]

Landlord and Tenant — Rent controlled premises — Vacation of — Compensation to tenant — Method of computing award — Meaning of "rent" — Controlled Premises (Special Provisions) Act (Cap. 267, 1970 Ed.) ss. 2, 7, 9 & 16(1).

This was an application by the plaintiff/tenant to the High Court under section 16(1) of the Controlled Premises (Special Provisions) Act.

The Tenants' Compensation Board had awarded the plaintiff the sum of $21,297 as compensation for vacating certain premises, on the basis of the rent being $100 per month. The plaintiffs contended that the rent was $332.33 per month which had been paid by them since the commencement of the tenancy with the previous landlord of the premises.

The crucial issue before the High Court concerned, *inter alia*, the true meaning of the words used by the Legislature in defining "rent" in section 2 of the Act.

Held, allowing the application: (1) the "rent" for the purposes of arriving at the compensation payable by the owner to a tenant under the Controlled Premises (Special Provisions) Act, means all sums of money in whatever manner expressed and howsoever paid by the tenant to the landlord "in consideration of the enjoyment of the premises let to the tenant";

(2) therefore, the matter must be referred back to the Board for an award to be made on the basis that the rent was $332.33 per month.

Observations on the objects of the Control of Rent Act and the Controlled Premises (Special Provisions) Act.

ORIGINATING SUMMONS.

S. K. Chan for the plaintiff.

Leong Keng Thai for the defendants.

Wee Chong Jin C.J.: This is an application made under section 16(1) of the Controlled Premises (Special Provisions) Act (Cap. 267, 1970 Ed.) by the plaintiff, Yap Giau Keng, to the High Court. The material facts are as follows: —

The defendants are the owners of premises known as No. 17 Robinson Road, Singapore (hereinafter referred to as "the said premises") which are premises subject to the Control of Rent Act (Cap. 266, 1970 Ed.). The said premises are also subject to the Controlled Premises (Special Provisions) Act (Cap. 267, 1970 Ed.). The plaintiff, Yap Giau Keng, is the tenant of the said premises holding on a month to month tenancy which commenced on 1st January 1967 from the then owner, A. C. Jap & Sons Ltd. The plaintiff, from the commencement of his tenancy, paid the monthly sum of $332.33 to his then landlord, the then owner, and the receipt issued for this monthly payment describes the payment as being "To Rent of No. 17 Robinson Road (Ground floor) & Supply & Maintenance". It is not in dispute that the said premises were supplied with air-conditioning from an air-conditioning plant provided by the landlord. The defendants purchased the said premises from A. C. Jap & Sons Ltd. and the plaintiff attorned tenant to the defendants as from 1st November 1969 by paying to the defendants the "rent" of $332.33 for the month of November 1969.

The first payment of "rent" of $332.33 and four subsequent payments of the "rent" for December 1969 to March 1970 by the plaintiff to the defendants of similar sums were received by the defendants but it would appear no receipts were issued by the defendants. It would also appear that the plaintiff paid to the defendants as "rent" for November 1969 the sum of $332.33 in spite of the fact that the defendants, through their solicitors, had requested, by a letter dated 9th November 1969, from him rent at $100 a month and it would also appear that the defendants accepted the plaintiff's tender of the November 1969 "rent" unconditionally. They similarly accepted the plaintiff's payments for the period from December 1969 to March 1970.

On 13th March 1970 the defendants wrote to the plaintiff again saying the rent was $100 per month and for the first time alleged that the difference between the rent of $100 and the sum of $332.33 paid by the plaintiff *i.e.* $232.33 was for "the supply and maintenance of the air-conditioning". The letter requested the plaintiff to pay $232.33 monthly in future to A.C. Jap & Sons Ltd. for "this service charge". Notwithstanding this letter it would appear that the plaintiff continued to pay and the defendants continued to accept from the plaintiff the sum of $332.33 monthly up to and including the month of December 1970. The defendants eventually purchased from A.C. Jap & Sons Ltd. the air-conditioning plant in April 1971.

On 30th June 1971 the defendants applied under the provisions of the Controlled Premises (Special Provisions) Act (hereinafter referred to as "the Act") to the Tenants' Compensation Board, a Board constituted under the Act, for an order for recovery of possession of, *inter alia*, the said premises and the Tenants' Compensation Board (hereinafter referred to as "the Board") made an order for recovery of possession under section 4 of the Act and then proceeded under section 7 of the Act to assess and award the plaintiff as compensation the sum of $21,297.

The main issue between the plaintiff and the defendants before the Board was what should be properly regarded as the rent of the said premises, the plaintiff contending that the rent was $332.33 per month and the defendants contending that the rent should be $100 per month. The Board, after considering several letters produced in evidence which passed between the parties and between the defendants or their solicitors and the solicitors or the rent agents of A. C. Jap & Sons Ltd., accepted the defendants' contention and assessed the compensation payable on the basis that the rent was $100 per month.

The present application has come to the High Court on the ground that the decision of the Board is wrong in law, it being contended first, that the Board admitted hearsay evidence and secondly, that on the evidence before the Board the Board was wrong in law, having regard to the definition of the word "rent" in the Act, to find the rent to be $100 and not $332.33.

In my opinion the letters produced before the Board were properly admitted in evidence and in any event I am of the view that the letters objected to by

the plaintiff as being hearsay evidence are irrelevant for the purpose of providing the "rent" paid either by the plaintiff to the defendants or to his previous landlord. The determination of this issue requires a consideration of the Act as a whole and sections 2, 7 and 9 of the Act in particular.

The object of the Act which was read for the first time in Parliament on 24th January 1968 and came into force on 27th February 1970 is as stated in the long title of the Act which reads:

"An Act to provide for the recovery of possession of premises for development purposes where the premises are subject to control under the Control of Rent Act (Chapter 266), for the establishment of a Board to hear applications for recovery of possession of such premises and to assess the amount of compensation to be paid to tenants and sub-tenants on account of such recovery of possession and for purposes connected therewith".

Section 2 of the Act defines "controlled premises" or "premises" to mean —

"Any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building, whether of permanent or temporary construction in which persons are employed, and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord, that is subject to control pursuant to the provisions of the Control of Rent Act and is situated in a designated development area;"

Section 2 of the Act defines "rent", unless the context requires otherwise, thus:

"'Rent' means the total amount paid by the tenant to the landlord in consideration of the enjoyment of the premises let to him, whether described as rent or not, and includes any sum paid as hire for the use of furniture where controlled premises are let furnished or where controlled premises are let and the furniture therein is hired by the landlord to the tenant;"

The material provisions of section 7 of the Act reads:

"7. (1) Where the Board has made an order under subsection (3) of section 4 of this Act in favour of a landlord of controlled premises, the following provisions with regard to quantum of compensation to be awarded by the Board to any tenant and sub-tenant shall apply: —

(a) in the case of controlled premises or part thereof occupied or used for commercial purposes the amount of compensation to be awarded shall be such amount as the Board considers fair and reasonable except that any amount of compensation, so awarded, shall not be less than the total of eight years' rent paid over the period of the eight years preceding the date of the application by the landlord to the Board;

(2) In determining the amount of compensation to be awarded to a tenant and sub-tenant under this section, the Board without prejudice to its right to consider any other relevant matter shall have regard to the following matters: —

(a) in the case of controlled premises used or occupied for commerical purposes —
  (i) loss of income attributable to the recovery of possession of the controlled premises;
  (ii) loss of goodwill (if any) attributable to any change of location of the tenant's business;
  (iii) cost of removal to another site;
  (iv) annual rent paid for the controlled premises; and
  (v) location and siting of the controlled premises;"

The material provisions of section 9 of the Act read:

"9. (1) Notwithstanding anything to the contrary in this Act, a tenant or sub-tenant of the whole or part of the controlled premises in respect of which an order has been made by the Board under section 4 of this Act shall not be entitled to compensation, or any apportionment thereof, if —

(a) he has not been in continuous occupation of the controlled premises, or part thereof, at any time prior to 1st January 1968;

It will thus be seen that the object of the Act is to enable owners of premises subject to the Control of Rent Act (Cap. 266, 1970 Ed.) to recover possession of such premises for development purposes and to provide compensation to be paid by such owners to tenants and sub-tenants (including occupiers since 22nd May 1972 *vide* Act 14 of 1972) who are dispossessed to enable owners to develop such premises.

Under the Control of Rent Act premises built or completed before 7th September 1947 are subject to the provisions of that Act and the rent of such premises is pegged at the rent of the premises as at 1st August 1939 or, in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after 1st August 1939 unless such rent has, prior to 20th July 1953, been fixed by the Rent Conciliation Board, a Board constituted under that Act, or unless the Rent Conciliation Board has on application to it fixed a new rent in respect of the premises.

Also, under the said Control of Rent Act a landlord of premises subject to that Act cannot obtain an order or judgment for the recovery of possession of such premises unless one of the conditions laid down in section 15 of that Act is fulfilled. The overall effect of the provisions of that Act is that tenants of premises subject to that Act are given security of tenure and are protected from unauthorised increases of rent.

The crucial issue in this application is what is the true meaning of the words used by the legislature in defining "rent" in section 2 of the Act. In interpreting this legislative definition of "rent" in the Act it seems to me permissible to bear in mind the object of the Act and the protection given by the Control of Rent Act to tenants of controlled premises both as regards tenure and the rent payable.

Bearing in mind what I have just said and looking at the definition of "rent" in section 2 of the Act it is in my opinion clear that by the use of the words "total amount" and "whether described as rent or not" the legislature has made its intentions plain, namely that the "rent" for the purposes of arriving at the compensation payable by the owner to a tenant under the Act means not the common law meaning of the word "rent" and not the meaning of the word "rent" as defined in the Control of Rent Act (Cap. 266) but all sums of money in whatsoever manner expressed and howsoever paid by the tenant to the landlord "in consideration of the enjoyment of the premises let to the tenant". In my judgment any other interpretation would defeat the object of the Legislature in enacting the Act because it is plain that by the enactment of the Act the Legislature, knowing that it has thereby deprived tenants of premises which are within a designated development area from the protection they have of security of tenure under the Control of Rent Act, has in return given such tenants the right to be fairly compensated by spelling out the minimum com-

pensation to be, in the case of commercial purposes, "not less than the total of eight years' rent" (see section 7(1)(a) of the Act).

I must, however, consider the argument advanced on behalf of the defendants in support of the Board's total award of $21,297. The argument is based on the meaning of section 7(1)(a) of the Act where a tenant, as in this case, has been a tenant of the controlled premises for less than eight years.

It is submitted that on the true construction of section 7(1)(a) the minimum compensation prescribed by the Act in respect of a tenant who has been tenant of the premises for more than eight years would be the total of the eight years' rent paid by him preceding the date of the application but in the case of a tenant who has been tenant for less than eight years the minimum compensation would be the total rent actually paid by him during the period of his tenancy. It is said that such a construction would be giving the words of section 7(1)(a) their natural and ordinary meaning and would also prevent the use of artificial or notional rent to decide the minimum compensation payable. If that construction is correct the applicant having been tenant from 1st January 1967 would have paid up to 30th June 1971 fifty four months rent at $332.33 monthly amounting in all to $17,945.82 which is well over the minimum sum prescribed by section 7(1)(a) and the Board's award ought to stand.

I do not accept this contention for to do so would be to disregard the natural and ordinary meaning of the words of section 7(1)(a) and to import additional words to section 7(1)(a). Quite clearly the Legislature must be deemed to have envisaged that there would be instances where a tenant has been tenant of controlled premises for less than eight years preceding the date of the application who would be entitled to compensation under the Act when one looks at section 9(1)(a) of the Act which enables that a tenant who has not been in continuous occupation of the premises at any time prior to 1st January 1968 shall not be entitled to compensation. The Act came into force on 27th February 1970. It follows that until after 31st December 1975 there may be tenants of controlled premises who would have been in continuous occupation since 1st January 1968 but who would not have paid a total of eight years' rent immediately preceding the date of the application and for such tenants, if the defendants' contention is sound, the Legislature will have failed to spell out precisely the minimum compensation they would be entitled to.

In my judgment to read into the words of section 7(1)(a) the construction put forward by the defendants would be to say that the legislature intended those words to mean that the minimum compensation payable, where a tenant has not been tenant for less than eight years immediately preceding the date of the application, is to be based on the actual rent he has paid *i.e.* the actual period of his occupation of the premises as tenant. If that is what the Legislature intended it would have been perfectly simple for the Legislature to add a proviso in words such as:

"Provided that where the tenant has paid less than the total of eight years rent over the period immediately preceding the date of the application the amount of compensation to be awarded shall not be less than the total rent paid by the tenant".

For all these reasons I direct that the matter be referred back to the Board for it to make an award on the basis that the rent *i.e.* the total amount paid by the plaintiff to the defendants in consideration of the enjoyment of the said premises let to him was $332.33 and not $100 per month. The plaintiff is entitled to the costs of this application.

Order accordingly.

Solicitors: *Shook Lin & Bok; Chung & Co.*

KEPPEL BUS CO. LTD. v. SA'AD BIN AHMAD

[C.A. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

July 31, 1972]

[Singapore — Civil Appeal No. 14 of 1971]

Master and Servant — Vicarious liability — Assault by servant in course of employment — Liability of master.

Damages — Eye — Loss of sight.

This was an appeal against the decision of the learned trial judge who awarded the respondent/plaintiff $20,290 damages for personal injuries and consequent loss and expense, caused by a bus conductor of the appellant company.

The respondent, while travelling as a fare paying passenger on a bus operated by the appellants, was struck on the left eye with a ticket punch by the bus conductor. He sued the appellants and the bus conductor for damages.

The appellants admitted employing the bus conductor, but denied liability on the ground that the assault was not within the scope of the bus conductor's authority and was an independent act unnconnected with his employment. Alternatively, the appellants pleaded *volenti non fit injuria*, alleging that the injury was caused by the bus conductor in the course of defending himself.

The learned trial judge found for the respondent. The appellants contended, *inter alia*, that the judgment was against the weight of the evidence.

Held, dismissing the appeal: (1) on the question of assault there was sufficient evidence to support the learned trial judge's findings;

(2) on the question of vicarious liability, there was sufficient evidence for the trial judge to conclude that the bus conductor, in hitting the respondent on the eye, was acting in the course of his employment. In the result, the appellants had been rightly held to be vicariously liable for the assault committed by the conductor.

Observations on principles which should guide an appellate court where the trial court has made wrong findings of primary facts.

Cases referred to:-

(1) *Hontestroom Case* [1927] A.C. 37 at p. 40.

(2) *Canadian Pacific Railway Co.* v. *Lockhart* [1942] A.C. 591 at p. 599.

COURT OF APPEAL.

K. E. Hilborne for the appellants.

H. E. Cashin for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, Sa'ad bin Ahmad, while travelling as a fare paying passenger on a bus operated by the appellants, Keppel Bus Co. Ltd., was struck on